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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,255	06/23/2000	Grover John Manderfield JR.	P00.0677	1215

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SONNENSCHN NATH & ROSENTHAL
P.O. BOX 061080
WACKER DRIVE STATION
CHICAGO, IL 60606-1080

EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,255

Applicant(s)

MANDERFIELD ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on August 27, 2002 has been entered.

Election/Restrictions

2. Claims 11-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

3. Applicant's election without traverse of Group I, the container, in Paper No. 3 is acknowledged.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Pasquale (U.S. 5,385,250). Pasquale teaches a plastic molded container having an upper rim comprised of element 4,

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a bottom comprised of element 3 and a sidewall comprised of elements 6-8. The sidewall comprises a lower frustum section at 7, a narrow mid-section at 8 and an upper frustum section at 6.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquale in view of Randall (U.S. 5,996,882). Pasquale discloses the claimed invention except for the container being made of a multi-layer plastic. Randall teaches that it is known to make a container of a multi-layer plastic (see col. 10 lines 43-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale made from the multi-layer structure taught by Randall, in order to give the container a desired flexibility while not compromising the effective sealing qualities of the container.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquale in view of Fortuna (U.S. D279,550). Pasquale discloses the claimed invention except for the container having a diameter greater than the height. Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquale in view of Edwards (U.S. D270,814). Pasquale discloses the claimed invention except for the standing ridge. Edwards teaches that it is known to provide a container standing ridge (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale with a standing ridge, as taught by Edwards, in order to allow the container to be supported more stably on a flat surface.

10. Claims 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquale in view of Cistone et al. (U.S. 5,865,345). Pasquale discloses the claimed invention except for the oxygen barrier layer. Cistone et al. teach that it is known to provide a container with an oxygen barrier layer (see col. 1 line 60 to col. 2 line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale with an oxygen barrier layer, as taught by Cistone et al., in order to better protect the contents of the container.

11. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pasquale in view of Cistone et al. and Fortuna. Pasquale discloses the claimed invention except for the oxygen barrier layer. Cistone et al. teach that it is known to provide a container with an oxygen barrier layer (see col. 1 line 60 to col. 2 line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale with an oxygen barrier layer, as taught by Cistone et al., in order to better protect the contents of the container.

Fortuna teaches that it is known to provide a container with a diameter greater than the height. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Pasquale with an increased diameter, as taught by Fortuna, in order to increase the capacity of the container and provide the container with increased stability and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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Conclusion

12. **THIS ACTION IS MADE NON-FINAL.**

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme
Patent Examiner
December 14, 2002